Heal the Bay

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August 31, 2007

Deborah Smith
Interim Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Comments on the Tentative Waste Discharge Requirements (WDRs) and National Pollutant Discharge Elimination System Permit (NPDES) – Boeing Company – Santa Susana Field Laboratory (NPDES Permit No. CA0001309) and Cease and Desist Order for the Boeing Company – Santa Susana Field Laboratory

Dear Ms. Smith:

On behalf of Heal the Bay, we submit the following comments on the *Tentative WDRs and NPDES Permit for the Boeing Company – Santa Susana Field Laboratory* ("Tentative Permit" or "Permit") and the *Tentative Cease and Desist Order for Santa Susana Field Laboratory* ("CDO"). We appreciate the opportunity to provide these comments.

In general, Heal the Bay supports the Tentative Permit. The inclusion of numeric effluent limits for storm water discharges from the facility is proper and was upheld by the State Water Resources Control Board ("State Board") on December 13, 2006. Further, Regional Board staff appropriately uses Best Professional Judgment ("BPJ") to establish numeric limits for several parameters such as perchlorate that have been detected in runoff and/or groundwater.

However as outlined below, there are several effluent limits based on TMDL waste load allocations that are missing from the Tentative Permit. In addition, several modifications to the Permit's monitoring and reporting program are necessary to properly assess discharge impacts.

Of note, we do not concur with several provisions in State Board Order WQ 2006-0012 that are reflected in the Tentative Permit. Specifically, "interior" outfalls should include numeric effluent limits and not benchmarks, as effluent limitations should be included for <u>all</u> discharge points. Also a retroactive CDO is inappropriate. Even if the wildfires that occurred on September 28, 2005 further exposed the facility to erosion problems and resulted in additional ash deposition on surrounding soil, that should not relieve the Permittee of its obligations to comply with its waste discharge requirements. These concerns are described in more detail in our letter to the State Board dated December 6, 2006.

<u>EFFLUENT LIMITATIONS</u>

Heal the Bay strongly supports the use of numeric effluent limitations for storm water discharges in the Tentative Permit. As upheld by the State Board, the Regional Board has full authority to establish effluent limits for discharges consisting entirely of storm water. The presumption

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under the Clean Water Act is that numeric effluent limits will be the tools used to limit the discharge of pollutants, particularly toxic ones. Further, the Ninth Circuit has expressly upheld the State's authority under the Clean Water Act to establish numeric WQBELs for industrial storm water discharges. *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159. Thus, the Regional Board has full authority to establish numeric limits, including for toxic constituents in storm water, using the CTR. Further, the Regional Board may do so by using Best Professional Judgment.

We also strongly support the effluent limits based on the waste load allocations for all adopted TMDLs. As discussed in the Tentative Permit findings, both the Los Angeles River and the Calleguas Creek are designated as impaired waterbodies under Section 303(d) of the Clean Water Act for numerous constituents, including several toxic constituents. TMDLs for various metals, toxics, nutrients and trash have been established for the Los Angeles River and Calleguas Creek. Thus, the Regional Board has additional authority under the Clean Water Act's TMDL program to set WQBELs for constituents covered by these TMDLs based on numeric targets and specific waste load allocations set forth in the TMDLs. In other words when there is a TMDL that defines the permissible load for a watershed, numeric limits must be set for discharges to that waterbody to meet the TMDL.

However, the Tentative Permit fails to include several numeric effluent limits based on TMDLs that have been adopted. The Total Maximum Daily Load for Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, its Tributaries and Mugu Lagoon includes a waste load allocation of 1.0 TU_c for the minor point sources discharging to the Calleguas Creek Watershed. Thus, discharges from outfalls that flow to Calleguas Creek should receive an **effluent limit** of 1.0 TU_c, not a chronic toxicity trigger. As written, the permit does not require Boeing to comply with the toxicity WLAs in the Calleguas TMDL. Also, the TMDL for Trash in the Los Angeles River Watershed that includes a waste load allocation of zero trash was adopted by the Regional Board on August 9, 2007. If the TMDL comes into effect before the Tentative Permit is adopted, this effluent limit should be included for Outfall 008.

MONITORING

Bioassessment Monitoring

As discussed in the Permit's findings, the Permittee has a long history of illegal discharge and noncompliance. In fact, the Permittee's discharge has chronically exceeded effluent limitations since 1998. Thus, the monitoring and reporting program should include annual upstream and downstream bioassessment monitoring. This monitoring will act as a "safety net" in the event that impacts resulting from the discharge occur. Bioassessment monitoring is critical to assess the full impacts of the discharge. Further, an Index of Biological Integrity score should be calculated from the annual macroinvertebrate surveys. The Permittee should use CDFG's recommended protocol for macroinvertebrate monitoring and IBI scoring.

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Toxicity Monitoring

The toxicity monitoring requirements provided in the Tentative Permit should be consistent with the final draft language developed by the Regional Board's storm water toxicity working group. This document is a guidance to the Regional Board for use in developing storm water permit toxicity monitoring and reporting requirements and includes recommendations for various aspects of toxicity testing such as the test species and the frequency and timing of sampling. For instance, the Tentative Permit requires a fathead minnow for freshwater acute toxicity testing and annual acute and chronic toxicity testing. However, the working group recommends that a *Ceriodaphnia dubia* 7 day survival and reproduction test be used to test all samples and a testing frequency of twice per wet season be required. The Regional Board should revise the Tentative Permit to be consistent with the Regional Board's working group recommendations that are outlined in the *SMBRC Technical Memorandum on Toxicity Testing of Wet and Dry Weather Runoff*.

Receiving Water Monitoring

The Tentative permit states that "[receiving water] monitoring will occur in Arroyo Simi in the area where storm water runoff discharges enters the receiving water." Tentative Permit at T-16. The Regional Board should provide a more robust description of the receiving water sampling sites. Also, the Tentative Permit states that storm water runoff from Outfall 008 flows to Dayton Canyon Creek and runoff from Outfalls 001 and 002 flows to Bell Creek. Why are there no monitoring locations in these receiving waterbodies? The Regional Board should include monitoring locations in these creeks and add a monitoring site downstream of all discharges so that cumulative impacts are monitored.

In sum, we generally support the Tentative Permit as currently written given the constraints imposed by State Board's Order WQ 2006-0012. However, the Regional Board should make modifications to the Tentative Permit's effluent limitations and monitoring and reporting program as outlined above.
If you have any questions or would like to discuss any of these comments, please feel free to contact us at (310) 451-1500. Thank you for your consideration of these comments.

Sincerely,

Kirsten James, MESM
Staff Scientist

Mark Gold, D. Env.
President

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